

**MINUTES
VILLAGE of ARDSLEY
ZONING BOARD of APPEALS
REGULAR MEETING
WEDNESDAY, NOVEMBER 22, 2017**

PRESENT: Patricia Hoffman, Esq., Chair
Jacob Amir, Esq.
Mort David
Maureen Gorman-Phelan
Michael Wiskind

1) **Call to Order**

The Chair called the regular meeting to order at 8:01 pm.

2) **Announcements and Approval of Minutes**

Announcements

The Chair announced that the next meeting of the Zoning Board of Appeals is scheduled for Wednesday, December 20, 2017 at 8:00 pm.

Approval of Minutes

Mr. David moved, and Mr. Wiskind seconded, that the Minutes of the October meeting be approved as amended.

Vote: 4 in favor, none opposed, 1 abstaining, as follows:

Patricia Hoffman, Esq., Chair –	aye
Jacob Amir, Esq. –	aye
Mort David –	aye
Maureen Gorman-Phelan –	abstain
Michael Wiskind –	aye

3) **Public Hearing**

Application for Renewal of Special Use Permit

Ni Nu Inc., d/b/a Bucci's Irvington Auto Body

646 Saw Mill River Road, Ardsley, New York

Section 6.70, Block 42, Lots 3 and 5, in the B-2 Special Business District

For renewal of Special Use Permit, to continue operation of autobody repair shop (Village Code Section 200-74B).

Present: Patricia Hoffman, Esq., Chair
Jacob Amir, Esq.
Mort David
Maureen Gorman-Phelan
Michael Wiskind

Also Present: Nunzio and Anna Bucci

The Chair read the Legal Notice.

Open Public Hearing

Mr. David advised that he has used Bucci's services, and that the relationship is purely business and not personal.

Mr. and Mrs. Bucci produced the eleven green cards received.

The Chair asked Mr. and Mrs. Bucci if they have received any violations in the past two years. Mr. and Mrs. Bucci replied that there have not been any. The Chair noted that applicant had submitted the current insurance certificate with the application materials. The Chair advised that upon expiration of the present (October 2017 to October 2018) insurance term in October 2018, applicant will be required to provide the Village with an additional insurance certificate.

The Chair asked if any member of the public wished to speak in support of or in opposition to the application. No one so wished.

Mr. David moved, and Mr. Wiskind seconded, that the Public Hearing be closed

Vote: Five in favor, none opposed, none abstaining, as follows:

Patricia Hoffman, Esq., Chair –	aye
Jacob Amir, Esq. –	aye
Mort David –	aye
Maureen Gorman-Phelan –	aye
Michael Wiskind –	aye

Close Public Hearing

Mr. Wiskind proposed, and Mr. David seconded, the following Resolution.

WHEREAS, Ni Nu Inc., d/b/a Bucci Irvington Auto Body, 646 Saw Mill River Road, Ardsley, New York, has applied to this Board for a renewal of a special use permit to continue to operate an auto body repair shop at the premises known as and located at 646 Saw Mill River Road, Ardsley, New York, a variance from the requirements of Section 200-74, Subdivision B of the Zoning Ordinance of the Village of Ardsley; and

WHEREAS, this application is made under the authority of Section 200-97 Subdivision B of the Zoning Ordinance of the Village of Ardsley, affecting premises known as 646 Saw Mill River Road, Ardsley, New York, and designated as Section 6.70, Block 42, Lots 3 and 5 in the B-2 Business District on the tax maps of the Village of Ardsley; and

WHEREAS, a public hearing on this application was held by the Ardsley Zoning Board of Appeals at the Municipal Building, 507 Ashford Avenue, Ardsley, New York on November 22, 2017, after due notice by publication; and

WHEREAS, at the hearing, Anna Bucci and Nunzio Bucci appeared in support of the application, and no one appeared in opposition to the application; and

WHEREAS, this Board after carefully considering all testimony and the application finds the following:

- (1) that all requirements for continuing the special use permit have been met;*
- (2) that applicant provided a Certificate of Liability Insurance for the premises with an effective date of October 26, 2017 through October 26, 2018; and*
- (3) that there are no current violations, as represented by Anna and Nunzio Bucci;*

NOW THEREFORE, be it resolved that the Zoning Board of Appeals grants the application for renewal of the special use permit to operate an auto body repair shop for an additional twenty-four months until November 2019, on the same terms and conditions set forth by the Board after public hearing on June 26, 1996, and

continued on July 24, 1996, and renewed annually for some period thereafter, and now being renewed biannually.

Proposed By: Mr. Michael Wiskind

Seconded By: Mr. Mort David

Vote: 5 in favor, none opposed, none abstaining, as follows:

Patricia Hoffman, Esq., Chair –	aye
Jacob Amir, Esq. –	aye
Mort David –	aye
Maureen Gorman-Phelan –	aye
Michael Wiskind –	aye

4) Public Hearing

Interpretation of Village Code Requirements

The Thorpe-McCartney Family Limited Partnership (by Thornwood Four Corners, LLC, Lessee)

657 Saw Mill River Road, Ardsley, New York

Section 6.50, Block 35, Lots 8, 9, 10 and 11, in the B-1 General Business District

For a determination whether legal non-conforming gas station use is abandoned (Village Code Section 200-100D).

Present: Patricia Hoffman, Esq., Chair
Jacob Amir, Esq. (recused)
Mort David
Maureen Gorman-Phelan, Esq.
Michael Wiskind

Attendees: Cynthia Thorpe Carey, of the Thorpe-McCartney Family
Limited Partnership
Osama Ali, project manager, Thornwood Four Corners LLC
Denise D'Ambrosio, Esq., Allen & Denoyer LLP, counsel
for Thornwood Four Corners LLC
Warren Cohen, Esq., attorney for Thorpe-McCartney Family
Limited Partnership
Donald Elmendorf, L.P.E. for Thornwood Four Corners LLC
Armand Boyagian, 486 Ashford Avenue, Ardsley, NY
Mark Kowalsky, 13 Captain Honeywell's Road, Ardsley, NY
Lee Lefkowitz, 5 Concord Road, Ardsley, NY
Gary Rappaport, 5 Victoria Road, Ardsley, NY
Peter Roderick, 37 Ridge Road, Ardsley, NY

Continuation of Public Hearing

For the benefit of those not present at the October meeting of the Ardsley Zoning Board of Appeals, the Chair again read the Legal Notice.

The Chair noted that at the October meeting, the Board heard a detailed presentation by applicant, and heard from members of the public in opposition to applicant's interpretation.

The Chair explained that this application is for an interpretation of the language of the statute. The Chair emphasized that this hearing is not a determination of gas stations or personnel or applicants, but solely of an interpretation of the language of the statute.

The Chair announced that although there is a full five-member Board this evening, Mr. Amir has recused himself, as he or his firm have had prior representations of one of the affiliates or related interests of the applicant. The Chair reminded applicant that with the four board members participating, a vote of three in favor is still required.

Ms. Gorman advised that she has read all the materials on this matter, both materials submitted by applicant and minutes of the August, September and October meetings. Ms. Gorman-Phelan added for the record that, prior to Thornwood's tenancy, she had used the (former) Getty gas station, and that she has had knowledge of the property and surroundings since 2016.

Ms. D'Ambrosio and Mr. Ali introduced themselves to Ms. Gorman-Phelan, and Ms. D'Ambrosio introduced Mr. Elmendorf.

Ms. Gorman-Phelan stated that before she can consider the question of abandonment, she asked applicant what they intend to use the property as (a gas station, an auto repair shop, or both). Ms. D'Ambrosio stated that she understands that the property was a gas station and a service station when the zoning ordinance rezoned the property as a B-1 property, and that that is why it is a legal non-conforming use. Ms. D'Ambrosio advised that, as previously stated, applicant does not intend to utilize it as a service station, and that they intend to continue only as a gas station. Ms. D'Ambrosio noted her understanding that there is no present need for a variance, only an interpretation of whether the legal non-conforming use has been abandoned. Ms. Gorman-Phelan referred to the Ardsley Village Code, section 200-2, and stated that in addition to the definition of gas station, which was read at the last meeting, that section also contains a definition of a motor vehicle repair shop. Ms. Gorman-Phelan asked which use was originally granted a variance. Ms. D'Ambrosio explained that no variance was ever granted, as the use was legal until the zoning code was amended, at which time both uses became legally non-conforming. Ms. D'Ambrosio contended that if her client were interested in continuing the service station use, they would be stating that it is a legal non-conforming use for both purposes. Mr.

David explained that the gas station definition encompasses both uses, and quoted from section 200-2 “ . . . and which may or may or not include facilities for lubricating, warranting or otherwise servicing motor vehicles . . . ” Ms. D’Ambrosio stated that applicant does not seek to go beyond that definition.

Ms. Gorman-Phelan asked if the tanks were removed by Getty on February 10, 2016, and if so would the six months have tolled on August 10, 2016. Mr. Ali confirmed that Getty removed the tanks on February 10, 2016. Ms. D’Ambrosio said that it would have tolled on August 16, 2016 if you were to count the tolling from that date [that Getty removed the tanks].

Ms. Gorman-Phelan asked the date of the last sale to public. Ms. D’Ambrosio stated that she did not know the date. Ms. D’Ambrosio added that perhaps the owner knows that date, but, as her client’s lease began on March 1, 2016, she is neither knowledgeable about nor comfortable addressing sales prior to her client’s tenancy.

Ms. Gorman-Phelan asked if the gas station became incorporated as Ardsley Gulf on February 1, 2016, and Ms. D’Ambrosio confirmed this.

Ms. Gorman-Phelan asked if Thornwood Four Corners LLC (hereinafter “Thornwood”) entered into a twenty-year lease on March 1, 2016, and Ms. D’Ambrosio confirmed this. Ms. Gorman-Phelan asked if the lease contained an agreement that tenant would take care of any kind of building and installation of tanks, and Ms. D’Ambrosio confirmed this. Ms. Gorman-Phelan asked if Thornwood knew, when they entered into the Lease, that it was a non-conforming use at that location. Ms. D’Ambrosio stated she could not answer that question, as she did not represent Thornwood at that time and as she never asked them that question. Mr. Ali stated that he did not know that it was a non-conforming use, and added that he has a gas station down the street. Ms. Gorman-Phelan asked if he knew that the other gas station was a non-conforming use. Ms. D’Ambrosio stated that she does not know that they would have focused on it being a legal non-conforming use because it was a legal use, so they would have had no reason to believe that they would have had any difficulty continuing to use it as a gas station. Ms. Gorman-Phelan asked if Mr. Ali did not know that it was in a B-1 district. Ms. D’Ambrosio stated that it is true that the property is in the B-1 district, and that it is a legal non-conforming use there, but that she does not know whether Thornwood knew those specifics, though she does know that Thornwood thought that they could legally continue to operate a gas station there under the current zoning code. Ms. D’Ambrosio reiterated that she does not know if her client knew the applicable zoning code, but that when they entered the Lease, they had every reason to believe that they could continue to operate it as a gas station.

Ms. Gorman-Pelan asked if Thornwood knew that there then were no tanks in the gas station. Ms. D’Ambrosio replied that there were tanks that had been pulled by the prior tenant. Ms. D’Ambrosio corrected her prior statement [at last month’s meeting] that “the

owner had caused the tanks to be removed,” and stated that the owner had not caused the removal, but that the [prior] tenant (Getty and/or the operator) had a right and probably an obligation under their lease to remove those tanks, and that therefore her client had no reason to know if there would be tanks there or not. Ms. D’Ambrosio added that her client had seen the tanks removed before they signed the Lease, and knew that there were no tanks in the ground when they signed the Lease. Ms. Gorman-Phelan asked if Thornwood had assumed the responsibility of installing the tanks and the piping and everything else, that they then knew that there were no tanks in the ground at the time they signed the Lease, and Ms. D’Ambrosio stated that this was correct.

Ms. Gorman-Phelan asked if Thornwood knew that there had been numerous spills at that location. Ms. D’Ambrosio stated that they did not. Ms. Gorman-Phelan asked if they knew that there had been at least one spill, and that that was why the tanks had to be removed. Ms. D’Ambrosio replied that the tanks were removed because it was the property of the prior operator. Ms. D’Ambrosio explained that the way many gas stations work is that the owner or tenant do not necessarily own the tanks in the ground, the dispensers and everything else. Ms. D’Ambrosio stated that she did not know what the lease with the prior operator provided, but that leases often provide that the operator will remove the tanks and dispensers at lease conclusion. Ms. D’Ambrosio added that tenants have the option to remove their personal property (which tanks and dispensers are) from owners’ property, and that is what the prior tenant opted to do here. Ms. D’Ambrosio stated that neither her client nor the owner had control over whether those tanks stayed in the ground or came out.

Ms. D’Ambrosio stated that both the owner and the operator had a legal right to continue to use that property at that time as a gas station, and that the parties entered into a Lease with that sole and exclusive purpose, to operate a gas station. Ms. D’Ambrosio stated that the purpose is clear and explicit in the Lease, and that Thornwood immediately proceeded to do what they had to do to build that gas station.

Ms. Gorman-Phelan asked why Thornwood, who owns many gas stations, did not check to see if there had ever been a Spill on that property when entering into the lease. Ms. D’Ambrosio replied that there had been a Spill that was reported when the [prior tenant’s] tanks were removed, and that that Spill was closed by the Department of Environmental Conservation (hereinafter “DEC”) shortly thereafter. Ms. D’Ambrosio explained that if a Spill is closed, one has every reason to believe that no further work is necessary, because a spill closure report, done by a qualified professional, is a report to the DEC that all the necessary investigative and protective measures were done. Ms. D’Ambrosio added that this proved to be incorrect, because although a Spill closure had been issued, the DEC reopened the Spill and in fact issued a Notice of Violation, so there is no doubt that DEC believes there to be contamination at the property. Ms. Gorman-Phelan asked when this [reopening] occurred. Ms. D’Ambrosio replied that it occurred more recently. Ms. D’Ambrosio explained that she understood Ms. Gorman-Phelan to be

asking about due diligence and if her client knew about other spills. Ms. D'Ambrosio stated that to this date she does not know about any other spills, and added that if there had been other spills, she is certain that DEC would have so informed them during the three or four times she has been there in the last month.

The Chair expressed her understanding that any time tanks are pulled, DEC is notified, and they automatically open a Spill record. Mr. Elmendorf stated that while that happens a majority of the time, it is not incumbent to report a Spill because you take tanks out of the ground, only when they pull tanks out of the ground and suspect or identify potential contamination. Mr. Elmendorf added that a spill is not called in to protect liability of operator or consultant or anybody else. Mr. Elmendorf stated that when you can take a tank out of the ground and the soil is clean, you do a notification to Westchester County to let them know about the work permit, and that is the end of it. The Chair asked if it was coincidental that the Spill was reported on the same day that the prior tenant pulled tanks out of the ground. Mr. Elmendorf replied that when they removed the tanks in February, they must have suspected contamination and called in DEC, and then the DEC closed it soon thereafter with an indication that they did not find that there was any spill.

Ms. D'Ambrosio stated that Thornwood was unaware of any spills prior to that upon entering the Lease, and added that there was another spill reported by Thornwood's contractor when they began digging for the tanks.

Ms. Gorman-Phelan pointed out that a Spill was reported on February 10, 2016 and closed on March 31, 2016, and that as Thornwood entered into the lease on March 1, 2016, Thornwood must have known about the Spill when they entered the lease. Ms. D'Ambrosio first assented, and then thought to ask Mr. Ali and owner. Mr. Ali said that he did not know of the Spill that had been called in. Ms. Thorpe said that she did not know about it, and added that in the many years of renting the gas station, she has never received any information from the DEC about any spill.

Ms. Gorman-Phelan noted that the lease was amended on August 31, 2016, and asked why it was amended. Ms. D'Ambrosio stated her belief that it had to do with the identification of the contamination and the lease provisions. Ms. Gorman-Phelan asked for a copy of that amended lease. Ms. Thorpe clarified that it was an amendment to the lease, not an amended lease. Ms. D'Ambrosio stated that she believed that the amendment had to do with a reduction in rent due to the extended time to get the gas station operational, and this was confirmed by Ms. Thorpe and her attorney, Mr. Cohen.

Mr. David asked for the precise date that the prior lease expired. Ms. Thorpe advised that the prior lease expired on February 28, 2016. Mr. Wiskind pointed out that the current Lease became effective on March 1, 2016.

Ms. Gorman-Phelan noted that April 19, 2016, Ardsley Gulf filed an application for a permit to install tanks, that the permit was granted on April 21, 2016 and expired on April 21, 2017. Ms. Gorman-Phelan asked if sometime thereafter a spill was discovered. Mr. Ali stated that the second spill was on April 20, 2016. Ms. Gorman-Phelan asked if that is the spill that remains open. Ms. D'Ambrosio replied yes, and added that the spill report is attached as exhibit B to Mr. Elmendorf's Affidavit, which was among the materials in the first submission to the Board.

Ms. Gorman-Phelan referred to Exhibit A to Mr. Ali's Affirmation in the second submission of materials to the Board, which said that on April 20, 2016, Barrier Contracting reported a suspected spill. Ms. Gorman-Phelan asked if at that point it was suspected but not confirmed by anyone that there was actually a spill. Ms. D'Ambrosio advised that there was no sampling done at that time. Ms. Gorman-Phelan stated that the sampling was done almost 4 months and 10 days later, on August 30, 2016. Ms. D'Ambrosio replied that that is correct, that they visually observed and/or smelled it, they dug out until they reached what they deemed to be a clean layer, they stockpiled it on site, and then they disposed of it off site, as they are obligated to do.

Ms. Gorman-Phelan asked if all the excavation and clean up was on the same day, on April 20, 2016. Ms. Gorman-Phelan read from an attachment to Mr. Ali's exhibit, *"Barrier Contracting excavates suspected contaminated soil for proposed tank excavation down to a level where the clean soil is encountered, approximately five feet deep, suspected contaminated soil are [sic] stockpiled near the northeast corner of the property pending sampling and disposal."*

Ms. Gorman-Phelan also noted that on August 30, 2016, Barrier Contracting conducted the soil sampling.

Mr. Wiskind pointed out that two bullet points down from where Ms. Gorman-Phelan was reading, it says between April and August of 2016, "applicant and owner discuss investigation and remediation options for suspected soil contamination." Mr. Wiskind asked if testing was going on during that period. Mr. Ali replied that stockpiling does not take one day, that it takes more than two or three weeks. Ms. Gorman-Phelan asked if the contaminated soil was removed only on October 20, 2016. Ms. D'Ambrosio replied yes. Ms. Gorman-Phelan noted that [the removal date] was exactly six months after the date of the discovered suspected contamination. Ms. D'Ambrosio replied yes, but pointed out that work on the site did not stop, and that in the interim, the soil was properly laid out on plastic and covered so that protective measures were taken.

Ms. Gorman-Phelan asked why it took from April 20 to June 10, when fuel dispensers were ordered. Mr. Ali replied that they were excavating. Ms. Gorman-Phelan asked if it took that long to excavate five feet. Mr. Ali stated that it is more than five feet. Ms. Gorman-Phelan asked if they dig down only until they find clean soil, and pointed out that the attachment to Mr. Ali's Affidavit says that is five feet. Mr. Ali explained that the

five feet is to find contamination, and that is when they call it in, but that is not when they stop digging. Mr. Ali stated that they continue to dig to create a pit to put the tanks in, and that the pit is supposed to be twenty-five feet by forty feet and fifteen to sixteen feet deep. Mr. Ali stated that they kept digging and stockpiling, and noted that it took nine trucks that are fourteen yards each. Mr. David pointed out that Mr. Ali had previously stated that it was 500 tons of contaminated soil. Ms. Gorman-Phelan asked if that was not removed until October. Mr. Ali replied yes, because once we find it, we need to find out who is responsible for it, what are we going to do with it, and the whole plan changed. Ms. Gorman-Phelan asked if they had not yet determined that there was contamination, as the samples were not taken until August 30, 2016. Ms. D'Ambrosio stated that samples were not taken, but Mr. Ali said that [the contractor] had said that they had used a PID to determine contamination.

The Chair asked what is happening on the property for four months, and why, if it takes two to three weeks to excavate, had the soil not been sent out for testing, as nothing indicates that due diligence was applied on the soil samples. Ms. D'Ambrosio replied that the soil samples are not the issue, as that did not complicate the property, what complicated it was the weather. Ms. Gorman-Phelan suggested that if you suspect another contamination, you get the soil tested and not wait four months to test. Ms. D'Ambrosio stated that the soil sampling did not change the progress, as they believed that they had [reached] clean soil, so the focus and efforts were on getting the tanks in ground. Mr. Ali stated that when we had the hole, and the suspected soil in one pile and the clean pile on other side, then we sent letters to Getty to tell them that there is a problem. Mr. Cohen confirmed this. Mr. Ali added that it took some time for Getty to get the matter to their legal department, and the subsequent back and forth.

Ms. Gorman-Phelan asked Mr. Ali if he had documentation of purchasing fuel that he gave or sold to the people working on property, and noted that the documentation submitted showed that the contractor had purchased fuel and had given it to himself and his workers. Mr. Ali said that he had thought that he had receipts. Ms. D'Ambrosio stated that Thornwood did not come before the Board on the basis of gas sales, but on the basis that [a gas station] is the same use since the beginning of time. Ms. D'Ambrosio stated that New York law is designed to eliminate non-conforming uses, but that you may not eliminate intent. Mr. Wiskind commented that the fuel receipt that was submitted is more confusing because it seems that the contractor purchased fuel for itself an operating cost and billed it back to the operator. Mr. Wiskind agreed, however, that the focus should be on the abandonment definition.

Mr. Wiskind stated that there have been two suggestions on how to read the Zoning Code – one, as originally written, together with more recent changes such as the addition of the six-month period; and two, that intent of the Village in changing the Code should carry more weight than the code as stated as a whole. Mr. Wiskind asked Ms. D'Ambrosio her perspective on that. Ms. D'Ambrosio replied that she does not know what the intent was,

but assumes that the intent was to try and fit within New York law, which has said that if you have a time period in your statute, then the time period governs and not the intent of the person, to take the subjective analysis out of it, i.e. “but I always meant to build that house,” so she thinks the time period was put in to alleviate, the “my intention was this.” Ms. D’Ambrosio continued that she does not disagree with New York law, but that she is going a step further in saying one, [zoning codes] are strictly construed, and two, you have to look at your code as a whole, as you have there the definition of “used” includes “intended” and “designed,” so if it [the addition of the six-month period] was intended to accomplish that goal [of removing subjectivity], it did not, and maybe it should be modified, but right now it is still there, and you have to read intent into it.

Ms. D’Ambrosio stated that even if you do not [read intent into it], you as a Board can say that this is a land use statute and the use of this land did not change. Ms. D’Ambrosio pointed out the she has not found one case, and she has not seen anybody cite a case, that has the factual scenario that is here, which is that from the beginning of the project through to the end of the period of interpretation, and even further, when the interpretation was referred to the Board by the Building Inspector, the sole and singular goal was to maintain the same use. Ms. D’Ambrosio stated that [work] did not stop for any purpose other than to install the tanks and to be improved as a gas station, and Ms. D’Ambrosio noted that that is all that could have been done because of the way the lease is phrased.

Ms. D’Ambrosio opined that this is really a land use interpretation, and that whether you poured, pumped or sold gas, and whether you serviced vehicles, is not critical to the analysis. Ms. D’Ambrosio admitted that it would help, but that that is not what Thornwood brought before you because she does not have the facts about servicing vehicles. Ms. D’Ambrosio stated that they know servicing of vehicles took place because Mr. David had stated that he had had his car inspected there, and the Department of Motor Vehicles (hereinafter “DMV”) inspection sign was still on the wall, and we have photographs showing it was still there. Ms. D’Ambrosio stated that they attempted to find out how long the servicing of vehicles took place on the premises after the lease was entered, but was not able to get those facts from the DMV, and that she would have supplemented the submitted materials had she been able to obtain that information. Ms. D’Ambrosio added that they did not even get the keys to the building in which the servicing was taking place until August 2017 because it was being used for that purpose. Mr. David stated that he had had his car inspection there in April 2016.

Mr. David asked Ms. D’Ambrosio to clarify the two dates mentioned regarding the Building Inspector’s referral to the Village Board of Trustees. Ms. D’Ambrosio reported that Mr. Tomasso wrote the letter on June 23, 2017, but that in April 2017 he had indicated that he would be making that referral, and that accordingly he did not want to act on the application for a building demolition permit. Ms. D’Ambrosio added that it was effectively in April 2017 when work could no longer proceed.

Ms. Gorman-Phelan asked why the application for a demolition permit had not been filed earlier. Mr. Elmendorf reported that he was rehired in August 2016, met with Mr. Tomasso at the end of August, and had preliminary drawings of where we were going to put the tanks. Mr. Elmendorf further reported that in his many discussions with Mr. Tomasso about the design changes, they always openly discussed the most critical timing to put in certain permits. Mr. Elmendorf stated that although the building was an obstacle on the property which was inconvenient for the excavating but not critical, so they thought removing the building was not timely as both parties wanted to protect the assets of the owner. Mr. Elmendorf stated that when they got the tanks in the ground, they decided to request demolition of the building.

Ms. D'Ambrosio added that they also had gotten a new survey, and that the original plan was to maintain the building in its location, but it became structurally insecure, and we found out from the survey that there was more space in the back. Mr. Elmendorf reported that the surveyor finally completed a true and accurate boundary survey on October 24, 2016, so then we knew what we had to work with and started planning building location, where the tanks, dispensers and canopy might be. Mr. Elmendorf continued that immediately afterward, they were able to generate a preliminary site plan for the Village to review, that Mr. Tomasso reviewed it and made comments, and we changed the plan again. Mr. Elmendorf also reported that during this time, they were continuing to excavate, and that during this period, no work went on without the Building Inspector being there on a regular basis or having conversations with him. Mr. Elmendorf concluded that the intent was always pushing forward, with the ultimate goal of putting in the station, and that the building was very old and structurally unsound, and we finally put in the application for a demolition permit in April 2017.

Ms. Gorman-Phelan asked when the tanks were installed. Mr. Elmendorf reported that at the end of December 2016, the tanks were placed in the ground, but not with any piping. Mr. Elmendorf referred to his Supplemental Affidavit, where he stated that rain was a major problem on the site, and that after that it was winter and everything froze up like a rock. The Chair asked if one tank was reset in April, and Mr. Elmendorf replied yes, by April, in March or April.

Mr. Wiskind stated that he wanted to return to the issue of interpreting New York State law. Mr. Wiskind referred to the material submitted by Gary Rappaport, which quotes from the Toys R Us Court of Appeals finding that abandonment generally requires the intent to relinquish and not a failure act, but that the use of a lapsed period removes some of those requirements. Ms. D'Ambrosio stated that that case does discuss intent, which is consistent with what she said about New York law trying to eliminate non-conforming uses, and these statutes being designed to remove subjective analysis. Ms. D'Ambrosio continued and referred to later in the Toys R Us case, from which she quoted, "all zoning cases are by their nature fact specific, and, as a leading authority recognizes, the right to a

non-conforming use must necessarily be decided on a case by case basis.” Ms. D’Ambrosio urged that the present case is one of those [that should be looked at on a case by case basis], that this is not a situation of not pumping gas for six months being the beginning and ending of the analysis, nor is it whether you lived in the house or not, but that it is a multitude of factors, especially here where you are improving the site.

Ms. D’Ambrosio also pointed out that there was no lapse in what they were going to do with this property, and that if you look at the cases, there is always some lapse, but that here there is no lapse and it was continuous from beginning to end. Ms. D’Ambrosio expressed understanding about the Board’s concern about how quickly we moved, but stated that that does not change the fact that there were complicating variables, and that Thornwood acted in good faith with diligence appropriate under the circumstances with the owner.

Ms. D’Ambrosio also urged the Board to focus on the fact that Thornwood is the tenant here, and that this is an owner’s property. Ms. D’Ambrosio pointed out that the owners have owned it for a very long time, that they have used it for the sole and singular purpose of a gas station, in certain circumstances with attendant service station, that they wanted to continue that use and endeavored to do that in every way they could, and are still here trying to do that. Ms. D’Ambrosio added that she has not seen a case that decided that [these facts would constitute] an abandonment, despite looking at a lot of cases, and she noted that Mr. Rappaport had not provided them one either.

Mr. Wiskind remarked that Ms. D’Ambrosio’s comments get back to the statement at the beginning of the Zoning Code about “use” also meaning “intended,” and asked Ms. D’Ambrosio if she wanted to address that further. Ms. D’Ambrosio replied that she wanted to point out that New York law requires [that the statute] be strictly construed, and construed in favor of applicant.

The Chair followed up, and stated that in reading documents and case law, it appears that businesses that are conforming could tear down and build a new building and not be held to six months in which to complete the project, whereas businesses that are legally non-conforming are handled with a different standard and may modify or refurbish only if it can be done within six months, and asked Ms. D’Ambrosio if that was a double standard. Ms. D’Ambrosio replied that she did not come across any cases that demonstrated such a double standard. Ms. D’Ambrosio stated that the statute was designed to eliminate legal non-conforming uses, but that she does not believe there is a distinction in the statute between businesses and residential, as many cases talk about, e.g., two-family homes. The Chair said that she was asking if there were a double standard for conforming and non-conforming businesses, i.e., that a pizza parlor in a B-1 zone could take three years to renovate, but that if the business is a non-conforming use, it must be complete the work within six months or it is deemed abandoned. Ms. D’Ambrosio replied that she has not seen any case law to that effect, and that that is what her argument is. Ms.

D'Ambrosio stated that it is an issue of zoning and land use, and not that you have to do your renovations within a six-month period. Ms. D'Ambrosio asked if the Chair was saying that the person could not take down their building and build a new building, that they would be limited to using this old deteriorating building. Ms. D'Ambrosio added that removing old tanks is always a good idea, and that refurbishing and modifying the gas station by putting the tanks in a different location and moving the tanks and pumps back from the road is positive. Ms. D'Ambrosio stated that she does not believe that renovation, improvement or redevelopment of the same use must occur within a six-month period, and that she has seen nothing in the law that says that.

The Chair asked, as Thornwood took over tenancy on March 1, what the projected date was when the new tanks would be in and business would start, and then were going to continue renovating the building, and what the original schedule was for the gas station to open. Ms. D'Ambrosio stated that she did not know a definitive time other than as quickly as possible. The Chair asked how long you usually predict. Mr. Ali stated that his ordering the pumps and tanks indicated that he was trying to get it open as soon as possible to do business, and added that that is the purpose of paying rent and tax on the property and continuing to pay all these expenses. Ms. D'Ambrosio asked Mr. Ali if he had a definitive date, and Mr. Ali said no. Ms. D'Ambrosio drew the Board's attention to the projected schedule in Mr. Elmendorf's Affidavit, and stated that if the board were to approve the project, based on that schedule, she believes it was six months. Mr. David said that he thought it was June. Mr. Wiskind said that June includes replacing the building, but that, as was stated at the last meeting, the overall schedule was on the order of two to three months, based on using the existing building, and that having to replace the building and build a new building will add some time to it. Mr. Elmendorf stated that as soon as they took possession, they ordered tanks and had them delivered to the site, that they were not going to be ordering the tanks later, that they already had tanks there ready to be installed with the intent of putting them in with the existing building. Mr. Elmendorf continued that, on finding suspected contamination, they took those tanks away and used them on a separate site knowing that if there is a clean-up, there is no sense in leaving tanks out in the sun because it voids the warranty and things get hurt and damaged. Mr. Elmendorf added that the intent was that the tanks are going back in and they will be done asap, so that would have been probably two or three months, and that that is why he was not called back in. Mr. Elmendorf continued that by the time they renegotiated the lease, he got called back in the first week of August and was told that the game plan had changed and they needed new drawings. Ms. D'Ambrosio concurred that she had forgotten that the tanks were on site but had to be taken off site and new ones had to be ordered.

The Chair pointed out that applicant stated that they did not get keys to the building until August 2016, at which point the tanks are gone but inspections and repair work are still being done, and asked who was performing the servicing on vehicles in April of 2016, and asked if it was Thornwood. Mr. Warren Cohen introduced himself as the attorney for

the owner. Mr. Cohen stated that the prior tenant, Getty, had subleased to Global, and that Global had their mechanic on premises, and that the mechanic did not get out when Getty got out on February 28, 2016, so that this fellow was still there inside the building. The Chair asked if he was a holdover. Mr. Cohen said that he was, and that he ultimately got out. Mr. David asked how the previous tenant could sublease when he no longer had a lease. Mr. Cohen stated that he sublet it prior to the lease ending. Mr. Cohen added that [the Global mechanic] was a holdover, but only occupying the interior of the repair facility, so he is probably the guy that did [Mr. David's] inspection. Mr. Wiskind asked if he was explicitly permitted by the owner to be there. Ms. Cynthia Thorpe Carey stated that Thorpe-McCartney had a lease with Getty, and that Getty did not let them know, now or back when the lease was written forty years ago, that Getty was pretty much allowed to do what they wanted, and we had no knowledge, because all of the taxes and lease payments were made by Getty checks, but for one year prior to lease ending, they had subleased to Global Alliance. Mr. Wiskind asked if [Getty] was not required to get [Thorpe-McCartney's] permission. Ms. Thorpe-Carey replied, "not under a forty year ago lease, we had nothing to do with that." Mr. Wiskind asked if the sublease did not have to terminate when Getty's lease terminated. Ms. Thorpe-Carey replied that it did, but that Global had another kind of contract with the person that was servicing in the bays in that garage. Mr. Cohen added that [the contract between Global and the mechanic] extended beyond February 28, 2016. Mr. Wiskind stated that it seems that you would have had the right to just kick him out. Ms. Thorpe-Carey stated that Thornwood had asked them to leave him in there. Ms. D'Ambrosio clarified that Thornwood had so asked "so that they were operating." Ms. D'Ambrosio added that when Thornwood wanted them to leave, they had difficulty getting them to leave, and they had to change the locks.

The Chair quoted from the October 12, 2017 Notice of Violation applicant had provided, *"A review of the Spill Report and inspection by the Westchester County Department of Health indicates that this site is still in need of a full investigation of the contamination remaining on the site and work plan to remediate it. Please submit a work plan site assessment to me in writing by October 25, 2017."*

The Chair asked if that has happened. Ms. D'Ambrosio stated that it has not happened because the DEC has been involved since that Notice of Violation, and the DEC wants owner or tenant or both to enter into an Order on Consent, and that Order on Consent is currently being negotiated with the DEC, and under that Order on Consent, the investigation, work plan and/or any remediation work plan that is required will be implemented under DEC auspices. The Chair asked if Ms. D'Ambrosio met with them on October 27, 2017. Ms. D'Ambrosio replied that they did, and that it was right after the last [Zoning Board of Appeals] meeting. The Chair asked if a follow up meeting scheduled with them was scheduled. Ms. D'Ambrosio said that they did not, that they need to batten down the language on the Order on Consent and who is going to sign that. Mr. Cohen added that they had had a conference with the DEC on October 27, 2016, and that no further meeting was required, that was required was a matter of entering into a

potential Consent Order, which is right now the subject of negotiation. Ms. D'Ambrosio noted that they did not have the Notice of Violation when we were before the Board on October 25, and that although the Notice is dated October 12, when we went to the meeting, DEC said, "well you have the Notice of Violation," and we said, "no we don't," and that it was sent to them only after the [October 27th] meeting.

Mr. Wiskind referred to item #11 of Mr. Ali's most recent [Affidavit], which talks about a gas station that is further down Saw Mill River Road that you also operate. Mr. Wiskind noted a statement there that "the build of that gas station (which was replacing a previously existing station) took approximately 18-24 months." Mr. Ali replied that it took at least that long. Mr. Wiskind asked what was involved in that period when no gas was able to be sold. Mr. Ali said that it was the same thing, that no gas was sold there for more than three years, during the construction period. Mr. Wiskind noted that he was on the Board of Architectural Review at that time, and remembers approving the canopy, but does not remember the exact chronology. Mr. Ali stated that he was not there, so cannot speak too much about it, but that he knows about it from records that he pulled from the office. Ms. D'Ambrosio stated that Brian Worser in the office had photos of that station that look similar to the station now being worked on. Mr. Ali stated that they tore it down and found contamination there, and that there was back and forth between Texaco and Shell because they were merging, and that by the time they finished that and cleaned up, it took more than twenty-four months because the letter says from 2007. Mr. Wiskind asked the period during which there were no operations at all. Mr. Ali stated that it was more than two years, that it was under construction more than two years. The Chair asked if no business was operated or transacted at that location during that time period. Mr. Ali replied that it was just under construction. Ms. D'Ambrosio asked Mr. Ali to corroborate her understanding that there was a former gas station, but that the old one was taken down and Thornwood started anew. Mr. Ali said that the owners could speak to that question, as it is the same owners. Ms. Thorpe-Carey stated that she does not think that any gas was pumped, and that it was a long time that the station was taken down and a new one [put up] with all the times that they had to have redesigns, even if it was a few trees that needed to be moved owner and back, and then it was finally a year and a half or two years.

Mr. David asked if the gas station you are referring to is also in a B-1 district. Ms. Thorpe-Carey stated that it is located at 730 Saw Mill River Road. The Chair stated that she believes that what is now a Shell station is also in a B-1 zone, and added that it is relevant, because if [the abandonment statute] was not applied to that gas station, why would it be applied to this one. Mr. Rappaport interjected that [the statute] was not on the books then. Ms. D'Ambrosio stated that it was. Mr. Rappaport asked if the gas station was built before 2007. Ms. D'Ambrosio said that it was not. The Chair asked that everyone please address the Board. Ms. D'Ambrosio stated that she knows that it was 2007 because she has Minutes from the Ardsley Planning Board meeting of September 10, 2007 discussing that station. Mr. David stated that he believes Mr. Tomasso knows

the reason for the different treatment. Ms. D'Ambrosio offered to provide the Board the September 2007 Planning Board Minutes if they thought it would be helpful as a point of reference, and mentioned that those Minutes indicate that it was before the Village Board of Trustees "for approval of the site plan and new construction at the now vacant gas station." Ms. Gorman-Phelan asked if the Village had not sent it to the Zoning Board of Appeals. Ms. D'Ambrosio quoted from the Minutes, "and referred the matter to the Planning Board for its review and recommendation." Mr. Wiskind stated his belief that demolition would have been involved there, because the previous building was in a different location. Mr. Ali confirmed that it was taken down completely.

Mr. Wiskind pointed out that the Zoning Code was changed in 2003, which was before this project in 2007. The Chair stated that it also must be a legal non-conforming use because it also is within the B-1 district.

The Chair asked if there had been a change in lessee [at the 750 Saw Mill River Road gas station]. Ms. Thorpe-Carey stated that it had been Motiva, which was part of Texaco, and they did not want to lease it anymore, and that Andrea Rosenberry, a principal of Thorpe-McCartney, had been involved. Ms. Thorpe-Carey stated that Motiva went through all the plans, and that when Ardsley Snack Bar came to rent, they agreed and paid for all the constructions, that lessee One put in the applications and lessee Two came in with the reconstruction. Ms. Thorpe-Carey added that Motiva pulled their tanks and opened and closed a spill, and that Ardsley Snack Bar came in and had to go for other permits to start building, and that she went and put up orange fence for at least six months. Mr. Wiskind stated that the Building Inspector must have records.

The Chair stated that it appears to have had a similar renovation, transfer of lessee, and a period of time during which business may or may not have been conducted, and if so, the Board will now need to look at how the Village handled that situation, because this Board cannot determine that we are going to handle similar situations differently. The Chair added that it is a case by case issue, but if we have [similar] circumstances at two places within a quarter of a mile of each other, that presents a conflict. Mr. Cohen stated that Thorpe-McCartney will endeavor to supply the lease with the current tenant [at that location] as well as the termination of the previous tenant, and will see if they have any documentation as far as removal of tanks and placement of new tanks, the latter of which they may not have. Mr. Wiskind pointed out that the Village will have the Planning Board material on file. The Chair noted that it also indicates that the Village Board of Trustees was the lead agent in approving the change of type of service, because at one point that had been a full-service gas station that not only pumped gas but also did repairs and, the Chair believes, DMV inspections. The Chair stated that it is similar to this situation in that that function of the business was shut down and it became only pumping gas and maybe air, and a convenience store, and that [renovation] took place over a period of eighteen to twenty-four months, which influences our perspective on the

abandonment issue. Ms. D'Ambrosio commented that this is unprecedented in how it was handled.

The Chair stated that the Board will move this matter forward, despite this additional hurdle. The Chair asked if there was anything else that applicant would like to submit. Ms. D'Ambrosio asked if the Board planned to adjourn the matter. The Chair advised that because of the volume of information that we have received, some of it only 48 hours ago, and some questions that have arisen, and the fact that the Board needs to put this record together and develop some questions of our own and then seek advice from the village attorney, she believes that the Board needs to put this off, and also may have a work session prior to the next meeting, which will be December 20. The Chair added that, as the Public Hearing will be held open, applicant may provide additional submissions. Ms. D'Ambrosio stated that if the Board wants her to supplement anything, she will be glad to do so, and that if the Board wants her to review the record for that [730 Saw Mill River Road] site, she can do so if it is a matter of public documents.

The Chair asked Ms. D'Ambrosio if she had indicated that she had FOILED information from the Village. Ms. D'Ambrosio replied that she had submitted her FOIL requests to the Board. Ms. D'Ambrosio added that perhaps she should go look at [the documents], but that she had not received them. The Chair asked the date of Ms. D'Ambrosio's FOIL request. Ms. D'Ambrosio replied that it was before her first submission to the Board. Ms. Gorman-Phelan noted that Ms. D'Ambrosio had previously stated that she prepared the FOIL request on August 31, 2017, and delivered it on September 6, 2017.

Mr. David expressed concern about adding to the time line, and asked applicant where they are now in terms of getting things done. Ms. D'Ambrosio replied that they are ready. Mr. David asked if they are ready to pour concrete. Mr. Elmendorf stated that if you look at his timeline, the next critical juncture is to get the site investigation done, present the data to the DEC, have them turn around quickly on a response that yes, this area needs to be cleaned up or this area is clean, and stated that if the DEC will cooperate, they can fast track that pretty quickly. Mr. Elmendorf continued that once we do that, then my timeline comes into effect, they can order the building materials as soon as they get the decision, pumps and dispensers that they don't already have on hand can be gotten fairly quickly. Mr. Elmendorf stated that it is January until they can do the investigation, and that by the end of February, winter is ending, and March is warming up so we can start prepping the site, moving the dirt around, pouring concrete, and we are into summer. Mr. Elmendorf noted that that is an ideal scenario for any construction project as opposed to the less than ideal that we were faced with of starting work in September-October and hope that winter does not kill you before you have a chance to get everything done. Mr. Elmendorf concluded that the answer to your question, is yes, we can do it pretty quickly. Mr. David reiterated his concern that the Board's additional requests not make "justice delayed is justice denied." Mr. Elmendorf replied that it is a legitimate concern, but assured Mr. David that winter does not stop us from doing the site investigation.

The Chair asked if members of the public wished to speak in support of the applicant, and no one so wished. The Chair asked if members of the public wished to speak in opposition to applicants, and what follows are those remarks.

Armand Boyagian, 486 Ashford Avenue

The Chair asked Mr. Boyagian to please confine his comments to the language that we are addressing. Mr. Boyagian stated that he prepared a time line based on the documents of the applicant. Mr. David asked if he had copies for the Board. Mr. Boyagian offered two copies. Mr. David asked how Mr. Boyagian's timeline is different from what applicant has provided. Mr. Boyagian said that he had to extract from documents submitted to the Board, and that it tells you a little bit about how expeditiously things did or did not occur. Mr. Boyagian referred to the six-month period from February 10, 2016 to August 10, 2016, and stated that at the bottom he made some analysis of just talking about the tanks because that is a big issue, specifically that it took nine months from February 10, 2016 to get the tanks delivered, according to the information providing on applicant's form, and that is just the delivery. Ms. Gorman-Phelan pointed out that applicant had indicated that the tanks had been delivered and they had had to remove them because of the spill, and that the tanks were actually delivered to the property in April, so she does not think that the nine months Mr. Boyagian has on his chart accurately reflects what applicant's papers indicate. Mr. Boyagian asked if those tanks that were removed were brought back. Ms. Gorman-Phelan reminded Mr. Boyagian that under warranty they had to give them somewhere else because they were not going to be able to use them. Mr. Boyagian asked why applicant did not have the area ready to put tanks in when they arrived. Ms. Gorman-Phelan replied that they could not because of the alleged contamination. Mr. Boyagian stated that he was just introduced to a job in Philadelphia, a \$100 Million Dollar job, and they had fifty days to do the job, that everything needed for the job was brought to a staging ground, that they shut the train down, and the contractor took over and finished the work in fifty days. Mr. Boyagian contended that we have a similar situation here where we are talking six months and if there had been that kind of drive to get the work done in six months, at least the pumping area would have been done, though he does not think the building could have been built in six months. Mr. Boyagian stated that it took fifteen months to get the tanks into the ground, which was April 2017, and if there had been a desire to get the job done in six months, the tanks would have been there, perhaps not the month they started, but soon thereafter. Ms. Gorman-Phelan asked Mr. Boyagian if there is anything within applicant's time frame that he disputes. Mr. Boyagian stated that he never saw applicant's time frame. Mr. Wiskind noted that Mr. Boyagian's property abuts this property. Mr. Boyagian stated that, as a seasoned construction manager and advisor, it was sloppiest most inefficient excavation operation I have ever witnessed, there was a machine stuck in the mud, and they created a mountain [of excavated material] behind the open cut area. Mr. Wiskind pointed out that those are acts of the contractor, not the

operator and not the property owner, and that it is certainly not in the interest of any of those parties to have it not operating when it is costing somebody money for rent and other expenses. Mr. Wiskind continued that, as the Chair stated, the question here is the interpretation of the Zoning Code, that no one disputes that the schedule got stretched out for a lot of different reasons, but the question is the wording of the Zoning Code and whether the situation here constitutes “abandonment,” so it would be helpful to focus on that aspect. Mr. Boyagian stated his contention that if there was an intention of non-abandonment, the project itself would have been more readied to meet the mandates of the short time period they had to make the installation, and it was not there.

Mark Kowalsky, 13 Captain Honeywell’s Road

Mr. Kowalsky opined that the Board thinks the main issue is trying to find consistency between how this abandonment clause was interpreted in 2007 versus today. Mr. Kowalsky stated that finding consistency is beyond the scope of this meeting and is not the Board’s job. Mr. Kowalsky stated that he is sure that the Board will consult with the Village attorney and determine what its latitude is here, but that he believes that the Board’s only job today is to interpret the abandonment clause today. Mr. Kowalsky noted that a lot has happened in our town over the past decades that he is sure that Board members and others that have been involved would like to change, and it cannot be changed, but this is the Board’s opportunity to be stewards of the Village and interpret the Zoning Code according to the law and our best interests. Mr. Kowalsky urged that the only question is how the abandonment clause should be interpreted today, and the questions the Board had about the Shell gas station in 2007, in his view, the Board probably would have made a different decision back then, but the Board is not responsible for those decisions, and should not be confined by them with the decision the Board is about to make. Mr. David pointed out to Mr. Kowalsky that unfortunately he was not at the prior meetings when Ms. D’Ambrosio raised another section of the Zoning Code, which is intent, which challenges the abandonment section of the Zoning Code. Mr. David stated that the decision is not an easy one, and that he has spent forty unbillable hours reading and rereading, and it is not as simple as Mr. Kowalsky suggests. Mr. Kowalsky replied that he is trying to simplify it for the Board in saying that 2007 is irrelevant, that the Board’s decision is in fact very difficult, and he understands that, today’s decision. Mr. Kowalsky stated that when he listened to the attorney’s comments about intent, and he also listened to the references to case law and precedent about the relevance of intent, he believes that this statute is working exactly the way it should, if it is applied properly, that this is the exact scenario, the six-month window, that abandonment is trying to prevent, to mandate that lessees and property owners manage their property well, without negligence, and in an efficient manner, and in the best interests of the residents and the Village, and that this is the exact reason this statute was developed. Mr. Kowalsky added that perhaps it is a way to manage non-conforming use, perhaps one could open a gas station in areas of the town that are zoned for gas stations, perhaps that is why this statute was instituted, perhaps it is a way to avoid negligence and

inefficient development of property. Mr. Kowalsky concluded that, however the Board wants to look at it, if [the statute] is applied properly, it will have functioned exactly as it was supposed to function, and he anticipates that the Board sees that and is troubled by what happened in 2007, and he would like to pre-empt that issue by telling the Board that it is not responsible for, and should not be bound by it.

Lee Lefkowitz, 5 Concord Road

Mr. Lefkowitz stated that he is disappointed that it was not until about 10:00 PM before anyone besides the applicant got to speak on the night before Thanksgiving, and that he saw a few people whom he thinks were opposed to the application that left, and he imagines that they would have said something if there had been a little more back and forth.

Mr. Lefkowitz stated that there was talk about another gas station on the road and whether that should impact this gas station. Mr. Lefkowitz urged that even if that scenario were on all fours with this one, where the Board could look and say that it should take the same approach that was taken then, it should not mean that the Board should take the same approach, because if the Board got it wrong then, it does not mean that it should get it wrong now, and it is particularly important here because would not that result in nullification of statute entirely if we just look back at what was done previously and do it exactly the same way, then this statute will never get applied in any situation because we will keep looking back at these previous applications and decide to just follow it blindly. Mr. Lefkowitz continued that even if we look back at that prior application and use it to inform what we do today, he does not think that the Board can do so based on what we heard today, because there were questions about was there any gas pumped at that other gas station during the time of construction, was any business done at that station during the time that construction was happening, and we were sort of told no, but he did not hear or see evidence that that was the case. Mr. Lefkowitz pointed out that we were also told that they removed 500 tons of dirt, which he said is the weight of more than eleven Boeing 747 planes, so Mr. Lefkowitz guesses that the facts that are being provided by the applicant are best case scenario not researched well, and worst case scenario just words that will support their case and whatever facts will get them the outcome they want, so if the Board is going to rely upon people's say-so about what happened at the other station as far as what happens here, we should get more than their say-so, we should get to the bottom of what the real facts were. Mr. Lefkowitz also stated that we were told at the beginning to confine our comments to only talking about the statute and the wording of the statute, and he heard a lot of talk about things that he thought were outside the lines of the statutes, such as excuses why the abandonment happened and talks about the other gas station, which are outside the lines of the statute but relevant, because we talk about why the reasons for the delay and the reasons for the abandonment, and we talk about that other gas station as a precedent for this one. Mr. Lefkowitz stated that if it does not talk about the words of the statute but is informative,

he thinks that it would have been appropriate for the Board to have had some comments about whether people in the Village want another gas station, and he expects that most do not, and he expects that if, in the announcement for this meeting, there was an indication that people would be allowed to talk about whether they want another gas station there, a lot more people would have shown up and said something about it. Mr. Lefkowitz stated that he thinks that talk about whether we want another gas station is relevant to the language of the statute in the same way that precedent of another gas station is relevant to the language of the statute – because it is a non-conforming use, and it is a non-conforming for a reason, because the people of the village decided no more gas stations there, and so talk about whether we want another gas station there bears on the interpretation of the statute, because people of the Village decided that they were going to make this use non-conforming, and here is the statute that is going to try to weed out even legal non-conforming uses, and so I think we would have gotten more attendance, even at 10:00 PM on the night before Thanksgiving.

Gary Rappaport, 5 Victoria Road

Mr. Rappaport stated that he is glad that his adversary now agrees with him that there probably was no sale in the six-month period, even though Mr. Ali had said that he made some sales, and he said that they knew about the six-month rule, and this is the same game that was played at the Shell station. Mr. Rappaport stated that that is not why the Board is here, that the focus should be on interpreting the statute, on whether there was abandonment at this location and not a decade and a half ago at a Shell station. Mr. Rappaport mentioned that he has provided the Board with the legislative history to determine what the elected representatives of the Village Board wanted, and it is fairly clear that you have six months to re-establish or discontinue a non-conforming use, and that there are no ifs, buts or other contingencies provided for in the zoning statute. Mr. Rappaport contended that what happens to the site if the application is rejected is not an issue, that how little applicant needs to complete the task is not an issue. Mr. Rappaport stated that the Board should go with the extensive case law he has cited, that intent is not relevant, that the cases are there, gas station case after gas station case, tanks, intent, gone, all out under the statute, six months, use it or lose it. Mr. Rappaport noted that in limited circumstances, never presented here, a Municipality or some truly intervening event has blocked compliance, and an applicant is 100% blameless, and he has cited those cases, the *Bogey* case, the case in Croton, and that that is not the case here. Mr. Rappaport continued that the Board should go with the long-standing policy in the State that non-conforming uses must end, the same way that at this location seventy years ago Smithy's Blacksmith Shop closed. Mr. Rappaport contended that the Ardsley Zoning Code provides for a strict use it or lose it policy, that applicant did not use it, they lost it, that the non-conforming use was abandoned under our statute. Mr. Rappaport concluded by noting that 2017 is the centennial of the birth of John F. Kennedy, our 35th President, tragically assassinated this day, and noting that in Kennedy's inaugural address, he famously delivered the following words, "ask not what your country can do for you, ask

what you can do for your country.” Mr. Rappaport stated that these words still resonate today, and he knows that they inform his, and he is sure some of the Board’s, and he believes that they should motivate the Board to ask what it can do for Ardsley, and opined that what he believes the right thing to do is to deny this application and find that there was abandonment. Mr. Rappaport stated that he concurs with his fellow resident who so eloquently stated that it is the purpose of the statute to put a final end to this use that elected representatives of this Village have found to be inimical to our interests and to our future.

Peter Roderick, 37 Ridge Road

Mr. Roderick stated that he just moved here four months ago. Mr. Roderick asked how many businesses in the village of Ardsley fall under the category of legal non-conforming use. The Chair replied that she did not know. Mr. Roderick asked if taxes are different for conforming versus non-conforming businesses. The Chair said that they are not, and explained that a legal non-conforming use means that that business was legal in that zoning district until the Zoning Code changed. Mr. Roderick asked if now it is not. The Chair explained that when they change the Zoning Code, the Village cannot go to that business and say, “last night at a Village Board meeting, we changed the Zoning Code, so you have thirty days to close up your business,” that if the business was legal yesterday, it will continue to be legal until an event occurs that causes it to be abandoned. Mr. Roderick asked the number of conforming versus non-conforming businesses in the Village. The Chair replied that it would be hard to say.

There being no other members of the public who wished to speak, the Chair advised that this matter will be continued until December 20, 2017, and that the Board will prepare questions and then contact Mr. Ponzini, the Village attorney, for insight on how to move forward.

On motion of Mr. David, seconded by Ms. Gorman-Phelan, the Public Hearing was adjourned by a vote of four in favor, none opposed, and none abstaining, as follows:

<u>Vote:</u> Patricia Hoffman, Esq., Chair –	aye
Mort David –	aye
Maureen Gorman-Phelan –	aye
Michael Wiskind –	aye

5) **Adjournment**

The meeting was adjourned at 10:16 PM.
Respectfully submitted,
Judith Calder

Recording Secretary